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304.01.04A TREATMENT OF ANNUITIES PURCHASED PRIOR TO 2/8/2006

An annuity purchased before February 8, 2006, by or for an individual using that individual's assets will be considered an available resource unless both of the following are met: (1) the annuity produces a net annual return of at least 6% of its equity value and (2) pays out principal and interest in equal monthly installments (no balloon payments) to the individual in sufficient amounts that the principal is paid out within the actuarial life expectancy of the institutionalized individual.

An annuity which does not meet the 6% rule, contains a balloon payment or is otherwise not actuarially sound will be considered an available resource. An annuity that is subsequently assessed under resources rules and determined to be inaccessible will be treated as a transfer of assets for less than fair market value.

304.01.04B TREATMENT OF ANNUITIES PURCHASED ON OR AFTER 2/8/2006

Disclosure Requirement

Effective 2/8/2006, at each application and review for Medicaid, all long term care applicants, are required to disclose any interest the applicant or community spouse may have in an annuity or similar financial instrument. This disclosure is a condition for Medicaid eligibility for long-term care services, including nursing facility services and Home and Community Based Waiver Services (HCBS) and applies regardless of whether or not an annuity is irrevocable or is treated as a resource.

Refusal to disclose sufficient information related to any annuity will result in denial or termination of Medicaid entirely, based on the applicant's failure to cooperate in accordance with existing Medicaid policies.

When an unreported annuity is discovered after eligibility has been established and after payment for long-term care services has been made, appropriate steps to terminate payment for long-term care services will be taken, including allowing for rebuttal and advance notice. In addition, an Improper Payment Report may be required to initiate recovery of incorrectly paid benefits.

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Requirement to Name the State as Remainder Beneficiary on Annuities

The purchase of an annuity may be treated as a disposal of an asset for less than fair market value unless the Mississippi Division of Medicaid is named as a remainder beneficiary. This requirement applies to annuities purchased by the institutional applicant or Community Spouse and to certain annuity-related transactions other than purchases (discussed below) made by the applicant or spouse.

An annuity must name DOM as the remainder beneficiary in the first position for the total amount of Medicaid assistance paid on behalf of the institutionalized individual unless there is a Community Spouse and/or a minor or disabled child. If there is a Community Spouse and/or minor or disabled child, DOM may be named in the next position after those individuals. If DOM is named beneficiary after a Community Spouse and/or minor or disabled child, and any of those individuals or their representatives dispose of any of the remainder of the annuity for less than fair market value, DOM may then be named in the first position.

If verification is not provided which reflects DOM as remainder beneficiary in the correct position on annuities purchased by the Institutionalized Spouse or Community Spouse, the purchase of the annuity will be considered a transfer for less than fair market value. The full purchase value of the annuity will be considered the amount transferred.

Information Provided by Agency to Issuer

For any annuity disclosed for the applicant or Community Spouse, DOM must inform the issuer of the annuity of the agency's right to be named as a preferred remainder beneficiary and may require the issuer to notify the agency regarding any changes in amount of income or principal being withdrawn from the annuity. The issuer of the annuity may disclose information about DOM's position as remainder beneficiary to others who have a remainder interest in the annuity.

Annuity-Related Transactions Other than Purchases Made on or after 2/8/2006

In addition to purchases of annuities, certain related transactions which occur to annuities on or after February 8, 2006, make an annuity, including one purchased before that date, subject to all provisions of the DRA that went into effect on 2/8/2006.

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Annuity-Related Transactions Other Than Purchases Made on or after 2/8/2006

(Continued)

Any action taken on or after February 8, 2006, by the individual that changes the course of payment to be made by the annuity or the treatment of the income or principal of the annuity, including:

- Additions of principal,
- Elective withdrawals,
- Requests to change the distribution of the annuity,
- Elections to annualize the contract and similar actions..

For annuities purchased prior to February 8, 2006, routine changes and automatic events that do not require any action or decision after the effective date are not considered transactions that would subject the annuity to treatment under the DRA provisions. Routine changes could be notification of an address change, or death or divorce of a remainder beneficiary and other similar circumstances. Changes which occur based on the terms of the annuity which existed prior to February 8, 2006, and which do not require a decision, election or action to take effect are also not subject to the DRA.

Treatment of Annuities in Determining Eligibility

An annuity purchased by or on behalf of an annuitant who has applied for medical assistance with respect to nursing facility or other long-term care services will not be treated as a transfer of assets for less than fair market value if the annuity meets the following conditions:

(1) The annuity is considered either:

- An individual retirement annuity (according to Section 408(b) of the Internal Revenue Code of 1986 (IRC); or
- A deemed Individual Retirement Account (IRA) under a qualified employer plan (according to Section 408(q) of the IRC);

(2) The annuity is purchased with proceeds from one of the following:

- a. A traditional IRA (IRC Sec. 408a); or
- b. Certain accounts or trusts which are treated as traditional IRAs (IRC Sec. 408 § (c)); or
- c. A simplified retirement account (IRC Sec. 408 § (p)); or

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Treatment of Annuities In Determining Eligibility (Continued)

- A simplified employee pension (IRC Sec. 408 § (k)); or
- A Roth IRA (IRC Sec. 408A).

OR

- (3) The annuity meets **all** of the following requirements for every month eligibility is being considered :
- a. The annuity is irrevocable and non-assignable; **and**
 - b. The annuity is actuarially sound; **and**
 - c. The annuity provides payments in approximately equal amounts with no deferred or balloon payments **and**
 - d. The annuity produces a net annual return of at least 6% of its equity value.

NOTE: Even if an annuity is determined to meet the requirements above and the *purchase* is not treated as a transfer, if the annuity or income stream from the annuity is transferred, that transfer may be subject to a penalty with the exception of transfers to a spouse or to another individual for the sole benefit of the spouse, to a minor or disabled child or to a Special Needs Trust.

Documentation of Qualifying IRS Annuities

To determine that an annuity is established under any of the various provisions of the internal Revenue Code that are referenced in items (1) and (2) above, rely on verification from the financial institution, employer or employer association that issued the annuity.

The burden of proof is on the institutionalized individual or his representative to produce documentation. If documentation is not provided, the purchase of the annuity will be considered a transfer for less than fair market value which is subject to a penalty. The full purchase value of the annuity will be considered the amount transferred.

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Consideration of Income and Resources from an Annuity

Even though an annuity is not penalized as a transfer for less than fair market value, it must still be considered in determining eligibility, including spousal income and resources and in the post eligibility calculation, as appropriate. In other words, even if an annuity is not subject to penalty under the provision of the DRA, this does not mean that it is excluded as income or resource.

Requirements for the Community Spouse

Annuities purchased by the Community Spouse on or after February 8, 2006, must name DOM as first beneficiary. The Institutionalized Spouse may not be named as a beneficiary ahead of DOM. However, if there is a minor or disabled child, the child may be named as primary and DOM as secondary.

It does not matter if the Community Spouse's annuity is actuarially sound or provides payments in approximately equal amounts with no deferred or balloon payments. These provisions apply only to annuities purchased by or on behalf of the individual who has applied for medical assistance.

Estate Recovery

Annuities purchased on or after February 8, 2006, will be subject to Estate Recovery. The rules for the Institutional Spouse and the Community Spouse are the same for annuities purchased prior to this date.

NOTE: If an annuity does not meet the DRA requirements set out above or is not changed to meet them, the purchase of the annuity will be considered a transfer for less than fair market value and subject to a penalty. The full purchase value of the annuity will be considered the amount transferred.